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The Application of Mercy: Equal Treatment for All Youth Who Commit Sex Offenses

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THE APPLICATION OF MERCY: EQUAL TREATMENT FOR ALL YOUTH WHO COMMIT SEX OFFENSES

Jennica Janssen *

David DeMatteo **

ABSTRACT

Both adults and youth who commit sex crimes may be mandated to register in their community as sex offenders. Depending on the laws governing the jurisdiction and the type of crime committed, a youth who commits a sex crime could be labeled a sex offender for the rest of their life. As minority youth, including lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, are disproportionately represented in the juvenile justice system, sex offender notification and registration laws have the consequences of adversely affecting the most vulnerable children in the community.

This article discusses the current state of the field regarding sex offender registration and notification laws, as well as the relevant social science research. It also examines the current juvenile justice reform movement in the area and provides a discussion about opposite-sex offender-victim prosecution in contrast with same-sex offender-victim prosecution. Finally, this article presents a study examining current public opinion regarding the registration requirements for opposite-sex offender-victim crimes compared to same-sex offender-victim crimes. Despite the results not supporting our original hypothesis, they still highlight the intense stigma facing all youth who are convicted of sex crimes. The results of this research study are considered in light of the recently released National Council of Juvenile and Family Court Judges resolution about the prosecution and treatment of youth who commit sex offenses.

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I. INTRODUCTION

As a seventeen-year-old high school senior in an urban city, Eric Smith enjoyed spending time with friends, playing basketball, and going to concerts.¹ Eric did not particularly enjoy his classes, but he attended school regularly, as he was looking forward to graduating in 2018. However, he mostly attended so he could spend time with his fifteen-year-old boyfriend. They were in a committed, mutually-caring relationship, but they were not open about their relationship because they were unsure how their friends and family would react. They had been dating for a year and had recently started having sex. While Eric was his boyfriend's first sexual partner, Eric had other partners the summer before his sophomore year. In Eric's experience, sharing naked photographs with one another was a way for the couple to be intimate when they were not able to physically be together.²

One evening, Eric's boyfriend left his phone unattended in the kitchen of his home. When his boyfriend's father saw Eric's explicit

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¹ This fictional vignette is based off a true case and used to illustrate the possible background story of a youth who is required to register as a sex offender for life. *See generally*, State v. Gray, 402 P.3d 254 (Wash. 2017). *See also* NICOLE PITTMAN & ALISON PARKER, RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE US (Human Rights Watch ed., 2013) [hereinafter HUMAN RIGHTS WATCH].

² *11 Facts about Sexting*, DO SOMETHING.ORG, <https://www.dosomething.org/us/facts/11-facts-about-sexting> [<https://perma.cc/QH6L-8R9Y>] (indicating that nearly 70% of adolescent boys and girls sext (send naked pictures) with their boyfriend or girlfriend); Sheri Madigan & Jeff Temple, *1 in 7 Teens Are "Sexting," Says New Research*, SCIENTIFIC AMERICAN (Feb. 26, 2018), <https://www.scientificamerican.com/article/1-in-7-teens-are-sexting-also-says-new-research/> [<https://perma.cc/4MB2-RKMS>] (indicating that teen sexting is becoming "a normal component of sexual behaviour and development in the digital age").

message appear on the screen, he became infuriated. He confronted his son about his same-sex relationship, and his son confessed that he was dating Eric and that they were in love. Angered, the boyfriend's parents informed law enforcement.

Eric was charged with possession and distribution of child pornography, for both the pictures of his boyfriend and himself. Although he was adjudicated delinquent in juvenile court and sentenced to serve sixty months of probation,³ this was considered lenient under the laws of the state.⁴ As a condition of his sentencing, Eric was required to register as a sex offender for the rest of his life.

When Eric turned eighteen years-old, during that school year, his status as a sex offender became a matter of public record even though he was still in high school. Within one week, the entire community was aware that there was a sex offender living amongst them. He was ostracized by other students and his family had to move because they resided too close to a school, a violation of the residency restrictions which apply to registered sex offenders. Eric took comfort in the fact that he was leaving for college shortly and circumstances would be different in another state where no one knew what happened.

Although he moved to a new place, Eric could not leave the sex offender registry behind. The sex offender registry and Eric's information were easily accessible to anyone who went to the public website and searched the area. Once, on his new college campus, he was harassed by the police and by his peers. He dropped out of college after one semester and began working. After a string of failed relationships, Eric grew frustrated explaining to his partners why he was a registered sex offender. He moved to yet another state for a fresh start.

Eric registered with law enforcement in the new state and found a job. He met his partner, fell in love, and had two children. Although he could not take his children to school or attend their after-school activities, he took pride in being a loving and supportive father. Eric was the primary income-earner and supported his family. However, his company relocated its office building next to a playground, and Eric had to quit because he did not want to violate the sex offender residency restrictions. Now age thirty, Eric finds himself with limited job prospects, a family to support, and no income. While he has tried multiple times to move past the events that

³ Adjudicated delinquent is used to describe a finding of guilt in juvenile court judgment, but it is not considered a conviction.

⁴ PA. JUVENILE INDIGENT DEFENSE ACTION NETWORK, THE PENNSYLVANIA JUVENILE COLLATERAL CONSEQUENCES CHECKLIST 2 (2015) (stating that a juvenile adjudication is analogous to an adult misdemeanor or felony).

occurred when he was a senior in high school, his life was defined by acting like many other in love teenagers do in the twenty-first century.

A version of Eric's story happens to far too many young people across the United States.⁵ Labeling youth with the scarlet letter of "sex offender" has costly consequences that essentially prevent the individual from ever leading a normal life, including maintaining a job, fostering relationships, and living wherever the person desires.⁶ This economic and educational depravation is aggravated by the detrimental psychological and physiological effects these individuals experience because of the stigma and restrictions associated with being a registered sex offender.⁷ Individuals like Eric are particularly vulnerable to harsher punishments and stricter registration laws because of their sexual orientation.⁸ This article reviews and investigates sexual crimes involving adolescents, specifically how the pairing of the offender's sex and the victim's sex contribute to punishment, registration, and public opinion regarding the offense.

In order to discuss the current state of juvenile sex offender legislation and reform efforts, it is essential to understand the historical context. Although laws meant to punish sex crimes previously existed, three particularly heinous crimes committed against young children by convicted sex offenders led to the creation of federal and state laws aimed at protecting vulnerable children.⁹ First, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 (the Wetterling Act) required states to create programs to monitor people who were convicted of a crimes against a minor or a sexually violent offense.¹⁰ Megan's Law, an amendment to the Wetterling Act, permitted sex offender registry information collected by these monitoring programs to be released for any

⁵ HUMAN RIGHTS WATCH, *supra* note 1, at 6 (stating that while there were 747,408 people registered as sex offenders in the United States in 2011, the proportion of adult and youth offenders could not be obtained using publicly available data).

⁶ See, e.g., HUMAN RIGHTS WATCH, *supra* note 1, at 47–51.

⁷ See generally HUMAN RIGHTS WATCH, *supra* note 1, at 50 (noting that the labels placed on sex offenders may last a lifetime); see also Amanda M. Fanniff, Carol A. Schubert, Edward P. Mulvey, Anne Marie R. Iselin & Alex R. Piquero, *Risk and Outcomes: Are Adolescents Charged with Sex Offenses Different from Other Adolescent Offenders?*, 46 J. OF YOUTH & ADOLESCENCE 1394, 1395 (2017).

⁸ See Jessica M. Salerno, Mary C. Murphy & Bette L. Bottoms, *Give the Kid a Break – But Only if He's Straight: Retributive Motives Drive Biases Against Gay Youth in Ambiguous Punishment Contexts*, 20 PSYCHOL., 20 PUB. POL'Y, & L. 398, 398 (2014).

⁹ David M. Heger, *Jacob, Megan, and Pam: Federal Sex Offender Registration Legislation*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RES. CTR. (2000), <https://mainweb-v.musc.edu/vawprevention/policy/fedoffender.shtml> [<https://perma.cc/V5TQ-63K5>].

¹⁰ *Id.*

purpose allowed by state law.¹¹ The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 established a national Federal Bureau of Investigations database with photographs, fingerprints, and current addresses of individuals who have been convicted of a sex offense.¹² Tougher sanctions and lengthier prison terms were also created as specific and general deterrents for sex crimes.¹³

The creation of the federal Adam Walsh Child Protection and Safety Act of 2006 (the Adam Walsh Act) extended the fear and misconception that individuals who commit sex offenses recidivate at a higher rate than other criminal offenders, and further creates a generalized notion that such individuals are not amenable to treatment.¹⁴ The Adam Walsh Act included young offenders on the sex offender registry and required states to comply with the Sexual Offender Registration and Notification Act (SORNA) of 2006.¹⁵ SORNA requires states to place those convicted of sex offenses on the public registry if they meet certain criteria, making the offender's name, past offenses, and current residence and workplace accessible through state sex offender websites.¹⁶ Although the original drafting of SORNA did not encompass youth offenders, the Amie Zyla provision of SORNA, as reflected in the Adam Walsh Act, included juveniles for certain offenses.¹⁷

Part II of this article gives a general introduction to juvenile sex offender registration and notification laws, as well as the relevant research.¹⁸ Part III examines the current state of juvenile justice reform in this area, addresses discrepancies between research findings and current law, and

¹¹ *Id.*; see also Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CALIF. L. REV. 163, 167 (2003).

¹² Heger, *supra* note 9; see also Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093 (1996).

¹³ Heger, *supra* note 9.

¹⁴ See HUMAN RIGHTS WATCH, *supra* note 1, at 4 (stating that recidivism rates for youth sex offenders are between four and ten percent); *Sex Offender Registration and Notification Act (SORNA)*, U.S. DEP'T JUST., <https://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna> [<https://perma.cc/D3H7-7Q2B>] [hereinafter *SORNA*].

¹⁵ Adam Walsh Child Protection and Safety Act of 2006, H.R. 4472, 109th Cong. (2d Sess. 2006).

¹⁶ See generally *SORNA*, *supra* note 14 ("The registration provides important information about convicted sex offenders to local and federal authorities and the public, such as offender's name, current location and past offenses.").

¹⁷ HUMAN RIGHTS WATCH, *supra* note 1, at 18-19; see also 34 U.S.C. § 20911(8) (requiring registration of certain juveniles who are adjudicated delinquent for certain sexual offenses if the juvenile is fourteen years of age or older and if the offense is comparable to or more severe than aggravated sexual assault as defined by 18 U.S.C. § 2241).

¹⁸ See *infra* Part II.

provides a discussion contrasting opposite-sex offender-victim prosecution with same-sex offender-victim prosecution.¹⁹ Part IV contributes to the research by investigating the public opinion of the offense severity and registration requirements for opposite-sex offender-victim crimes compared to same-sex offender-victim crimes.²⁰ This article concludes in Part V by arguing the importance of adhering to the new resolution regarding sex offender registration for all youth.²¹

II. WHERE WE ARE NOW: YOUTH WHO COMMIT SEX OFFENSES

Juvenile courts were created at the turn of the nineteenth century as an alternative to adult courts because children needed to be treated differently.²² The juvenile justice system focused on the welfare of children as “children were not of full legal capacity,” and it was essential for the state to “provide protection for children whose natural parents were not providing appropriate care or supervision.”²³ It was believed that youth were more capable of being saved from a life of crime, and, therefore, more amenable to treatment.²⁴ Regrettably, the United States began using more punitive measures—such as trying youth in adult court or imposing longer prison sentences—and moved away from the rehabilitation of justice-involved youth.²⁵ Despite research demonstrating that justice-involved youth are capable of rehabilitation, the United States has continued to criminalize youth offenses and decrease the separation between the juvenile and adult justice systems.²⁶

Before examining the treatment of same-sex offender-victim crimes compared to opposite-sex offender-victim crimes, it is important to understand the current status of juvenile sex offender legislation and efforts

¹⁹ See *infra* Part III.

²⁰ See *infra* Part IV.

²¹ See *infra* Part V; see also NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOLUTION REGARDING SEX OFFENDER REGISTRATION REQUIREMENTS FOR YOUTH YOUNGER THAN AGE 18 (2019) [hereinafter NCJFCJ RESOLUTION].

²² HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 94 (Off. of Juvenile Just. Delinq. & Prevention ed., 2006) (The first juvenile court in the United States was established in 1899 to allow the justice system to offer “benevolent intervention” for children engaged in criminal activity.).

²³ *Id.*

²⁴ Daniel P. Mears, Carter Hay, Marc Gertz & Christina Mancini, *Public Opinion and the Foundation of the Juvenile Court*, 45 CRIMINOLOGY 223, 223 (2007).

²⁵ SNYDER & SICKMUND, *supra* note 22, at 96–97.

²⁶ *Id.* at 232–35; see also Alex R. Piquero, Francis T. Cullen, James D. Unnever, Nicole L. Piquero & Jill A. Gordon, *Never Too Late: Public Optimism About Juvenile Rehabilitation*, 12 PUNISHMENT & SOC’Y 187, 188 (2010).

to reform this system. Section A explains the present state of the legal system with regards to prosecution of youth who commit sex offenses.²⁷ Section B discusses the utility of juvenile sex offender registration and notification laws and the underlying misconceptions dispelled by social science research.²⁸

A. Current Juvenile Sex Offender Laws

When sex offender registration and notification laws were first mentioned and drafted, justice-involved youth who committed sex crimes were not typically included.²⁹ Unfortunately, two “tough on crime” policies united, trapping juveniles charged with sex offenses by leading to their inclusion in sex offender registration and notification laws.³⁰ The first policy targeted violent youth offenders, and the second policy focused specifically on sex offenders.³¹ A movement to protect children ultimately led to the creation of laws that also targeted them.

All fifty states currently require adults convicted of certain sex offenses to register as sex offenders in their jurisdiction.³² Similarly, at least thirty-eight states register youth who have committed a sex offense and have been adjudicated delinquent in juvenile court or convicted in adult court.³³ As of 2011, at least twenty-seven states require juveniles adjudicated delinquent to register as sex offenders if they commit a crime that would mandate registration as an adult.³⁴ Some jurisdictions adopted harsher sanctions like requiring public internet registration or registration regardless of age.³⁵ For example, children as young as nine years old can be required to register as a sex offender if they are adjudicated delinquent in juvenile court.³⁶ Some

²⁷ See *infra* Part II Section A.

²⁸ See *infra* Part II Section B.

²⁹ HUMAN RIGHTS WATCH, *supra* note 1, at 16.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 17.

³³ *Id.* at 16.

³⁴ *Juvenile Sex Offender Registration and SORNA*, NAT'L CONFERENCE OF STATE LEGISLATURES (May 2011), <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-sex-offender-registration-and-sorna.aspx> [https://perma.cc/ZAJ9-RP67].

³⁵ Public internet registration means that the youth offender's private information is available to the public. This can include the individual's photograph, address, and offense history. See also HUMAN RIGHTS WATCH, *supra* note 1, at 42; Dylan Walsh, *The Crimes of Children*, THE ATLANTIC, Aug. 2015, <https://www.theatlantic.com/politics/archive/2015/08/the-crimes-of-children/398543/> [https://perma.cc/JDL6-9T5Y] (explaining the collateral consequences of registering as a sex offender including deportation after a sentence is served).

³⁶ HUMAN RIGHTS WATCH, *supra* note 1, at 33.

states also require the transfer of sex offender registration if the youth moves from one jurisdiction to another.³⁷

A shift recently occurred in the legal environment regarding juvenile sex offenders. In addition to fifteen jurisdictions that do not require any juveniles who are adjudicated delinquent to register as sex offenders,³⁸ two state supreme courts held that lifetime registration for youth who commit sex offenses is unconstitutional.³⁹ The Supreme Court of Pennsylvania held that the lifetime registration provision in SORNA violated the due process rights of youth who commit sex offenses because the law relied on the notion that youth sex offenders are at a high risk of recidivism—an irrebuttable presumption that is not “universally true.”⁴⁰ Similarly, the Supreme Court of New Jersey held that the statute requiring lifetime registration and community notification for youth who commit certain sex offenses violated the state constitution’s substantive due process guarantee.⁴¹ The court subsequently acknowledged that social science research and evidence in the case demonstrated that youth who commit sex crimes are less likely to reoffend than adults.⁴² As a result, by permanently branding these youth as sex offenders, the law prevented adolescents from finding employment, becoming accepted in their communities, forming

³⁷ *Id.* at 70; see QUYEN NGUYEN AND NICOLE PITTMAN, A SNAPSHOT OF JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS: A SURVEY OF THE UNITED STATES 68, 92 (Kirsten S. Ronholt et al. eds., 2011) (giving a comprehensive overview of Juvenile Sex Offender laws).

³⁸ *Juvenile Sex Offender Registration and SORNA*, *supra* note 34. These fifteen jurisdictions are Alaska, Connecticut, Georgia, Hawaii, Maine, Nebraska, New Mexico, New York, Pennsylvania, Tennessee, Vermont, West Virginia, District of Columbia, Guam, and Puerto Rico. However, it is important to note that this does not apply to juveniles transferred to adult court and convicted as adults for the purpose of sex offender registration.

³⁹ *SMART Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders*, U.S. DEP’T JUST., 10 (2015), <https://smart.gov/pdfs/SMARTSummary.pdf> [<https://perma.cc/KKG6-WDS5>]; see also *In re C.K.*, 182 A.3d 917 (N.J. 2018); *In re J.B.*, 107 A.3d 1 (Pa. 2014).

⁴⁰ *In re J.B.*, 107 A.3d at 14 (stating that not all juvenile offenders “pose a high risk of committing additional sexual offenses” as indicated by the Pennsylvania statute).

⁴¹ The type of sex offenses that are included are defined in the federal SORNA act, but can vary slightly by state law. According to SORNA, a “sex offense” means crimes having “an element involving a sexual act or contact with another.” 42 U.S.C. § 16911(5)(A)(i). A “specified offense against a minor” includes “video voyeurism,” “possession, production, or distribution of child pornography,” and “[a]ny conduct that by its nature is a sex offense against a minor.” 42 U.S.C. § 16911(7)(F)–(I); see *In re C.K.*, 182 A.3d at 934.

⁴² *In re C.K.*, 182 A.3d at 934.

relationships with others, and maintaining their self-esteem.⁴³ In other words, the law resulted in youth sex offenders becoming “social pariah[s].”⁴⁴

B. Harsh Juvenile Sex Offender Legislation is Harmful to Youth

Sex offender legislation was originally created with the intention of protecting vulnerable youth. However, youth who offend may also suffer unintended consequences from these laws. Research has demonstrated that juvenile sex offender registration negatively impacts youth in both the short-term and long-term.⁴⁵ In the short-term, SORNA registration interferes with education, as the child may have to move schools or drop out, leads to stigmatization and isolation due to the label of “sex offender,” and may cause the youth and his or her family to lose their housing due to residency restrictions.⁴⁶ Long-term, youth required to register as sex offenders experience pervasive economic consequences due to the difficulty of finding gainful employment, as well as detrimental, lifelong psychological effects.⁴⁷ Despite these findings, juvenile sex offender registration continues in the face of little evidence to validate that these laws fulfill their intended purpose: keeping children safer.⁴⁸

III. SOCIAL SCIENCE RESEARCH AND REFORM EFFORTS REGARDING JUSTICE-INVOLVED YOUTH

The Supreme Court’s jurisprudence in *Miller v. Alabama* suggested that “juveniles are unique.”⁴⁹ Similarly, in the words of Justice Kagan, it is important to consider youths’ “chronological age and its hallmark features—

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See generally HUMAN RIGHTS WATCH, *supra* note 1, at 50–75.

⁴⁶ See generally HUMAN RIGHTS WATCH, *supra* note 1, at 50–75. See also Walsh, *supra* note 35; Fanniff et al., *supra* note 7.

⁴⁷ See generally HUMAN RIGHTS WATCH, *supra* note 1, at 50–75.

⁴⁸ See generally Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?*, 54 J. L. & ECON. 207, 211 (2011); Kimberly J. Sahlstrom & Elizabeth L. Jeglic, *Factors Affecting Attitudes Towards Juvenile Sex Offenders*, 17 J. CHILD SEXUAL ABUSE 180, 181 (2008); Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Kevin S. Armstrong, & Debajyoti Sinha, *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?*, 37 CRIM. JUST. & BEHAV. 553, 565 (2010); Jeffrey C. Sandler, Naomi J. Freeman, & Kelly Michael Socia, *Does a Watched Pot Boil? A Time-Series Analysis of New York State’s Sex Offender Registration and Notification Law*, 14 PSYCHOL., PUB. POL’Y, & L. 284, 285 (2008).

⁴⁹ 567 U.S. 460, 465 (2012) (holding that the mandatory sentencing of juveniles to life without parole is unconstitutional). The government needs to examine the circumstances of every youth during sentencing because “juveniles are different.” *Id.*

among them, immaturity, impetuosity, and failure to appreciate risks and consequences.”⁵⁰ It is also important to continuously evaluate current law and its alignment with what is known about development over the human lifespan. Considerable psychological research suggests that during adolescent development, there is increased risk-taking behavior that tends to dissipate as the individual matures.⁵¹ As such, considering youth offenders as a whole is essential in understanding the nuances of those juveniles who commit sex offenses.

Section A examines the social science literature about justice-involved youth generally.⁵² A deeper analysis regarding the literature of youth who commit sex offenses is contained in Section B.⁵³ Section C looks specifically at research and the relevant law regarding same-sex juvenile sex offenses.⁵⁴

A. Research Concerning Justice-Involved Youth and Youth in General

Although eighteen is considered the all-powerful age when youth become adults, both in the eyes of society and in the eyes of the legal system (for most purposes), neurological research has demonstrated that the prefrontal cortex of the brain is not fully developed until age twenty-five.⁵⁵ The prefrontal cortex is responsible for higher-order thinking, including decision making, impulse control, and planning.⁵⁶ Adolescents do not comprehend and weigh the long-term impact of their decisions; instead, they focus on the immediate consequences.⁵⁷ Several research studies established that as a person ages, their ability to make choices and

⁵⁰ *Id.* at 477; see also *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) (holding that the decision in *Miller* is applied retroactively to individuals who are currently incarcerated after being sentenced to life without parole for crimes they committed as youth).

⁵¹ See generally Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEV. PSYCHOL. 625, 626 (2005).

⁵² See *infra* Part III Section A.

⁵³ See *infra* Part III Section B.

⁵⁴ See *infra* Part III Section C.

⁵⁵ See generally Sara B. Johnson, Robert W. Blum, & Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Health Policy*, 45 J. ADOLESCENT HEALTH 216 (2009).

⁵⁶ See generally Christopher G. Coutlee & Scott A. Huetell, *The Functional Neuroanatomy of Decision Making: Prefrontal Control of Thought and Action*, 1428 BRAIN RES. 1, 4 (2012).

⁵⁷ Michel Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications*, 6 NEV. L.J. 1111, 1120 (2006); see also Patrick M. McMullen, *Questioning the Questions: The Impermissibility of Police Deception in Interrogations of Juveniles*, 99 NW. U. L. REV. 971, 975 (2005).

comprehend the long-term impact of those decisions improves.⁵⁸ This is true of all aspects of an individual's life, including criminal behavior and legal decision making.⁵⁹

The general diminished capacity of juveniles directly relates to poor decision-making and the inability to understand criminal justice policies and practices.⁶⁰ For example, in the case of *Miranda* warnings for juvenile offenders,⁶¹ the "scope and extent of collateral consequences can be difficult to convey to juveniles in such a way that they could understand the long-term effects these consequences could have on their lives."⁶² The body of literature related to these topics is indicative of the impaired ability of youth to make long-term decisions and understand the consequences of involvement with the juvenile justice system.⁶³

Despite this, the United States legal system imposes long-lasting punishments on youth offenders, punishing behaviors that may be a part of boundary-testing during adolescence. However, reform efforts have recently shifted the focus of the juvenile justice system from punishment to rehabilitation. These efforts can be seen in the attempt to eliminate juvenile confinement,⁶⁴ create more juvenile diversion programs,⁶⁵ and focus on eliminating or restricting juvenile sex offender registration.⁶⁶

⁵⁸ Pinard, *supra* note 57, at 1120.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See generally Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1160, 1166 (1980) (finding that juveniles fail to meet the standards for comprehension of Miranda warning statements).

⁶² Pinard, *supra* note 57, at 1120.

⁶³ *Id.*

⁶⁴ See OJJDP Joins National Campaign to End Solitary Confinement for Youth, OFF. JUV. JUST. & DELINQUENCY PREVENTION (2016), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/newsletter/archives/249928/sf_3.html [<https://perma.cc/L9LG-4EXR>]; *Kids in the "Box": Solitary Confinement is Just Government-Sanctioned Child Abuse*, JUV. L. CTR. (July 8, 2016), <https://jlc.org/news/kids-box-solitary-confinement-just-government-sanctioned-child-abuse> [<https://perma.cc/9S2J-43WS>].

⁶⁵ Juvenile diversion programs are an attempt to thwart a youth's exposure to the criminal justice system by enrolling the youth in programs during different stages of the adjudication process that are focused on rehabilitation and the implementation of important social services, like addressing food insecurity. *Juvenile Diversion Programs*, NAT'L INST. JUSTICE <https://www.crimesolutions.gov/PracticeDetails.aspx?ID=37> [<https://perma.cc/3958-F634>]; Emily Haney-Caron, *Diversion Programs Can Help Keep Youth Out of "the System" by Preventing Arrests*, JUV. L. CTR. (Apr. 15, 2016), <http://jlc.org/blog/diversion-programs-can-help-keep-youth-out-system-preventing-arrests> [<https://perma.cc/6AXY-SLPC>].

⁶⁶ See generally HUMAN RIGHTS WATCH, *supra* note 1.

B. The Data About Youth Who Commit Sex Offenses

The logical understanding that youths should be treated differently than adults because they are different dissipates when faced with emotion-inducing sex crimes. In fact, the term “juvenile sex offender” elicits a stronger negative reaction in the mind of the public than simply describing the facts of the sex crime committed by a youth offender.⁶⁷ The public and our legal system have successfully demonized sex offenders, and this stigma has attached to youth who commit sex offenses.⁶⁸ However, research demonstrates that there are many misconceptions regarding justice-involved youth who commit sex crimes.⁶⁹ These misconceptions include that juvenile offenders are more likely to recidivate and commit additional sex crimes,⁷⁰ that they are less amenable to treatment and rehabilitation,⁷¹ and that they are more dangerous than other types of youth offenders.⁷² The data reveal

⁶⁷ Andrew Harris & Kelly Michael Socia, *What's in a Name? Evaluating the Effects of the “Sex Offender” Label on Public Opinions and Beliefs*, 28 SEXUAL ABUSE: J. RES. & TREATMENT 660, 665, 674 (2014).

⁶⁸ *Id.* at 660.

⁶⁹ Barbara L. Bonner, Mark Chaffin & Keri Pierce, *NCSBY Fact Sheet: Adolescent Sex Offenders: Common Misconceptions vs. Current Evidence*, THE NAT’L CTR. ON SEXUAL BEHAV. YOUTH (2003), <http://www.ncsby.org/sites/default/files/resources/Adolescent%20sex%20offenders%20-%20Common%20Misconception%20vs%20Current%20Evidence%20-%20NCSBY.pdf> [https://perma.cc/MR5G-HL48].

⁷⁰ Recidivism rates for juveniles who commit sex crimes to commit another sex crime is approximately 7%. Michael F. Caldwell, *Study Characteristics and Offender Base Rates for Juvenile Sex Offender Recidivism*, 54 INT’L J. OFFENDER THERAPY AND COMP. CRIMINOLOGY 197, 197–98 (2010).

⁷¹ Youth who participate in treatment programs are significantly less likely to reoffend. Lorraine R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles Measured by Recidivism: A Meta-Analysis*, 18 INT’L J. OFFENDER THERAPY AND COMP. CRIMINOLOGY 401, 405 (2006). In fact, most youth who commit sex offenses do not continue to sexually offend when they are adults. *See generally* Kristie McCann & Patrick Lussier, *Antisociality, Sexual Deviance and Sexual Re-Offending in Juvenile Sex Offenders: A Meta-Analytical Investigation*, 6 YOUTH VIOLENCE & JUV. JUST. 363, 363 (2008); Donna M. Vandiver, *A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults*, 21 J. INTERPERSONAL VIOLENCE 673 (2006).

⁷² In fact, there are more similarities than differences between general youth offenders and youth offenders who commit sex crimes. *See generally* Reitzel & Carbonell, *supra* note 71; Fanniff et al., *supra* note 7; Nancy G. Calleja, *Juvenile Sex and Non-Sex Offenders: A Comparison of Recidivism and Risk*, 36 J. ADDICTIONS & OFFENDER COUNSELING 1, 4 (2015).

that these myths are simply not true, and juvenile sex crime rates are not influenced by harsh sex offender registration policies.⁷³

Youth who commit sex offenses are a diverse population and have complex treatment needs.⁷⁴ National statistics indicate these offenders are approximately 80% male.⁷⁵ Approximately 80% of youth who commit sex offenses have some diagnosable mental health disorder that may have gone untreated, and 30%–60% of these young offenders have a cognitive learning disability.⁷⁶ Additionally, youth who sexually offend have often been victims themselves. It is estimated that 40%–80% of these offenders are victims of sexual abuse and 20%–50% are victim of physical abuse.⁷⁷

With the understanding of these characteristics regarding youth who commit sex offenses and sex crimes generally, it would be incomplete to disregard sexual orientation in the analyses of juvenile sex offenses especially considering that sexuality develops through adolescence.⁷⁸

C. Same-Sex Youth Sex Offenses

LGBTQ youth experience victimization in schools and the community at higher rates than their heterosexual counterparts.⁷⁹ The oppressive social environment created by this stigma negatively impacts the overall wellbeing

⁷³ See Jeffrey C. Sandler, Elizabeth J. Letourneau, Donna M. Vandiver, Ryan Shields & Mark Chaffin, *Juvenile Sexual Crime Reporting Rates Are Not Influenced by Juvenile Sex Offender Registration Policies*, 23 PSYCHOL., PUB. POL'Y, & L. 131 (2017).

⁷⁴ See generally JOHN HUNTER, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR: EMERGING RESEARCH, TREATMENT APPROACHES, AND MANAGEMENT PRACTICES 5–6 (Ctr. for Sexual Offender Mgmt. ed., 1999); see also ROBERT E. LONGO & DAVID S. PRESCOTT, CURRENT PERSPECTIVES: WORKING WITH SEXUALLY AGGRESSIVE YOUTH & YOUTH WITH SEXUAL BEHAVIOR PROBLEMS (NEARI Press. ed., 2006).

⁷⁵ Adam Brown, *Masculinity is Not Pathology: An Exploration of Masculinity Among Juvenile Sexual Abusers and General Delinquents*, 5 J. JUV. JUST. 121, 122 (2016).

⁷⁶ John A. Hunter, *Understanding Juvenile Sex Offenders: Research Findings and Guidelines for Effective Management and Treatment*, 19 DEV. MENTAL HEALTH L. 18, 20 (1999).

⁷⁷ HUNTER, *supra* note 74, at 1.

⁷⁸ Deborah L. Tolman & Sarah I. McClelland, *Normative Sexuality Development in Adolescence: A Decade in Review, 2000-2009*, 21 J. RES. ON ADOLESCENCE 242, 243 (2011) (Sexuality development and exploration is a *normative* piece of adolescence.). Sexual orientation is also discovered and established with the development of sexuality during adolescence. LGBTQ youth experience stigma already. Therefore, it is critical to examine how these LGBTQ youth are affected if they have committed a sexual offense. See Elizabeth M. Saewyc, *Research on Adolescent Sexual Orientation: Development, Health Disparities, Stigma, and Resilience*, 21 J. RES. ON ADOLESCENCE 256, 270 (2011).

⁷⁹ See Daniel E. Bontempo & Anthony R. D'Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, 30 J. ADOLESCENT HEALTH 364, 371 (2002); *LGBTQ+ Victimization Study*, RTI INT'L, <https://www.rti.org/impact/lgbtq-victimization-study> [<https://perma.cc/7UAG-4Q74>].

of these adolescents.⁸⁰ LGBTQ youth are already an at-risk group, but this is compounded by the fact that youth are overrepresented in the juvenile justice system.⁸¹ Even though LGBTQ youth comprise 7%–9% of youth worldwide, they make up 20% of all youth in juvenile justice facilities.⁸² Specifically, 3.2% of all boys and 39.4% of all girls in juvenile justice facilities identify as LGBTQ.⁸³ Furthermore, 85% of LGBTQ and gender non-conforming youths in juvenile justice facilities are youth of color.⁸⁴ Among other injustices, these youth suffer from abuse and mistreatment by staff, inadequate health care, challenges with family visitation, abuse by other youth, and inappropriate supervision.⁸⁵

In addition to the isolation and stigmatization youth experience when they are justice-involved, compared to heterosexual youths, LGBTQ youth face the additional challenge of discrimination in sex offense labeling.⁸⁶ In recent years, identifying as LGBTQ has become more socially acceptable; however, there was a time when it was against the law for same-sex couples to be intimate.⁸⁷ Before the Supreme Court deemed the law unconstitutional in 2003, it was illegal in Texas for two persons of the same sex to engage in certain intimate conduct, even though this intimate conduct was legal for heterosexual couples.⁸⁸ Fifteen years later, there are still anti-LGBTQ laws on the books in several states, including seven still in effect in Texas.⁸⁹ One

⁸⁰ Cathy Kelleher, *Minority Stress and Health: Implications for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Young People*, 22 COUNSELING PSYCHOL. Q. 1, 2–4 (2009).

⁸¹ See MOVEMENT ADVANCEMENT PROJECT, CTR. AM. PROGRESS & YOUTH FIRST, UNJUST: LGBTQ YOUTH INCARCERATED IN THE JUV. JUST. SYS. 2–3 (2017).

⁸² *Id.* at 2.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 4–7.

⁸⁶ Tom Wahl & Nicole Pittman, *Injustice: How the Sex Offender Registry Destroys LGBT Rights*, ADVOCATE (Aug. 5, 2016), <https://www.advocate.com/commentary/2016/8/05/injustice-how-sex-offender-registry-destroys-lgbt-rights> [https://perma.cc/48Q6-XH5R].

⁸⁷ See, e.g., Tex. Penal Code Ann. § 21.06(a) (criminalizing deviate sexual intercourse with another individual of the same sex); see also *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (holding that the statute making it a crime for two people of the same sex to engage in certain sexual acts violates the Due Process Clause).

⁸⁸ *Lawrence*, 539 U.S. at 563. The Texas law criminalized deviate sexual intercourse with another individual of the same sex. *Id.* The statute defined “deviate sexual intercourse” as “any contact between any part of the genitals of one person and the mouth or anus of another person.” *Id.* (citing Tex. Penal Code Ann. § 21.01(1)(A) (2003)).

⁸⁹ See generally John Wright, *Seven Anti-LGBT Laws That Remain on the Texas’ Books*, TEX. OBSERVER (Dec. 13, 2016), <https://www.texasobserver.org/seven-anti-lgbt-laws-that-remain-on-texas-books/> [https://perma.cc/ESN9-9T2M].

particular law in Texas, the “Romeo and Juliet” provision, provides a defense to statutory rape for heterosexual couples who are close in age but not similarly situated homosexual couples.⁹⁰

Despite the decrease in explicitly anti-LGBTQ laws, discrimination against LGBTQ individuals still exists. LGBTQ youth are disproportionately labeled as sex offenders due to implicit and explicit biases that persist in our society and criminal justice system.⁹¹ There are very few statistics available, but one research study demonstrated that given the same crime, people are more likely to support sex offender registration for LGBTQ youth than for heterosexual youth offenders.⁹² One contributing reason is that LGBTQ youth’s controversial sexual activities create moral outrage in the community.⁹³ The lack of empirical data on this topic warrants further research to facilitate additional analyses about the acceptability of sex offender registration, their amenability to treatment, and whether the perception of the offender’s dangerousness changes based on the perceived sexual orientation of the offender.

IV. PUBLIC OPINION REGARDING SAME-SEX OFFENDER-VICTIM CRIMES

The youth most likely to enter and be affected by the juvenile justice system are disproportionately part of a minority group.⁹⁴ Studies on disparities usually focus on the racial and ethnic backgrounds of justice-involved youth.⁹⁵ However, it is essential to consider other diversity components, like biological sex and sexual orientation, especially when

⁹⁰ Tex. Penal Code Ann. § 21.11(b)(1) (West 2017) (providing that “it is an affirmative defense to prosecution [for indecency with a child] . . . [if] the actor was not more than three years older than the victim and of the *opposite* sex”) (emphasis added); see Michael J. Higdon, *Queer Teens and Legislative Bullies: The Cruel and Invidious Discrimination Behind Heterosexist Statutory Rape Laws*, 42 U.C. DAVIS L. REV. 195, 198 (defining “Romeo and Juliet” laws as exceptions to statutory rape laws that “cover consensual adolescent sexual activity involving an adolescent below the age of consent when the sexual partner is another adolescent close in age.”).

⁹¹ Wahl & Pittman, *supra* note 86.

⁹² Salerno et al., *supra* note 8, at 407.

⁹³ *Id.*

⁹⁴ JOSHUA ROVNER, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM 1 (The Sentencing Project ed., 2014). For example, in 2010, even though African American juveniles comprised 17% of all youth, they account for 31% of all arrests. *Id.* Similar disparities exist among Latino youth. *Id.*

⁹⁵ *Racial and Ethnic Disparities*, COALITION FOR JUV. JUST., <http://www.juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards/section-i-principles-responding-5> [<https://perma.cc/8MGT-FAPZ>].

discussing crimes that are sexual in nature.⁹⁶ Sexual offenses, as discussed previously, are given special considerations and cannot be analyzed in the absence of the underlying biases that arise with sexual orientation.⁹⁷

It is essential to survey the public's opinions regarding this topic to further investigate the treatment of same-sex offender-victim crimes compared to opposite-sex offender-victim crimes. Given that legislative representatives are elected to represent the morals and values of their constituents, it is crucial to understand the factors people consider when contemplating punishment and rehabilitation for same-sex offenders as compared to opposite-sex offenders of sex crimes.

Section A explains the methodology behind the research study conducted for this article.⁹⁸ The results and relevant findings are examined in Section B.⁹⁹ A discussion regarding the implications of the data is in Section C.¹⁰⁰

A. Gathering Data to Inform the Analysis

To account for racial and ethnic disparities inherent in the juvenile justice system while also investigating the question of interest—whether same-sex offender-victim crimes are viewed differently than opposite-sex offender-victim crimes—this article elected to conduct research examining three different offender variables. The main variable of interest, same-sex sexual offenses or opposite-sex sexual offenses, was examined by manipulating the second variable, biological sex of the offender as either male or female. This resulted in the creation of four scenarios: male youth offender committing a sex offense against a female youth, male youth offender committing a sex offense against a male youth, female youth offender committing a sex offense against a male youth, and female youth offender committing a sex offense against a female youth. The race of the youth offender was specified as either white or black. The race of the victim was not explicitly stated. This resulted in eight different hypothetical scenarios based on the facts of a real-world juvenile sex offender case where the youth was required to register.¹⁰¹

⁹⁶ See, e.g., Sahlstrom & Jeglic, *supra* note 48 (discussing previous social science research that suggests female juvenile sex offenders are viewed as being more dangerous and less amenable to treatment).

⁹⁷ See *supra* Part II Section B.

⁹⁸ See *infra* Part IV Section A.

⁹⁹ See *infra* Part IV Section B.

¹⁰⁰ See *infra* Part IV Section C.

¹⁰¹ See *In re T.H.*, 913 N.W.2d 578, 580 (2018). This case concerned two opposite sex minors: I.N., a sixteen-year-old girl, and T.H., a fourteen-year-old boy. *Id.* They were talking

The survey created for this study was disseminated using Amazon Mechanical Turk (MTurk).¹⁰² Each participant was randomly assigned to read one of the eight vignettes and answer follow-up questions regarding (1) the acceptability of requiring the youth to register as a sex offender, (2) their fear of the offender, (3) appropriate notification requirements, (4) restrictions for the offender, (5) the offender's amenability to treatment, and (6) general risk questions. Before answering the questions, participants were provided with a brief explanation of the sex offender registry and how it is enforced. The survey included a demographics questionnaire and manipulation checks to ensure participants were attending to the details of the vignette. Data were collected from 952 participants¹⁰³ and results were analyzed using the IBM SPSS Statistical program.¹⁰⁴

After excluding data from the individuals who did not pass the four manipulation checks,¹⁰⁵ the final sample included 205 participants. On average, participants took approximately 5.91 minutes to complete the survey. Over half of the sample identified as female,¹⁰⁶ and the average age of the participants was 34.51 years, ranging from eighteen to seventy-five years old.¹⁰⁷ In identifying their race, the participants were mostly white, followed by black, then Asian.¹⁰⁸ Almost 10% of participants identified their ethnicity as Hispanic or Latino.¹⁰⁹ Additionally, 61% of participants indicated

on the front porch when T.H. began to kiss I.N. *Id.* She objected but continued to sit with T.H. on the porch. *Id.* T.H. then "exposed his penis and shoved the back of I.N.'s head downward toward it." *Id.* She protested repeatedly and said "no," but his penis entered her mouth. *Id.*

¹⁰² See AMAZON MECHANICAL TURK, <https://www.mturk.com> [https://perma.cc/26BF-UXRV]. Amazon Mechanical Turk (MTurk) is an online crowdsourcing marketplace where researchers can post surveys for people to complete for monetary compensation. *Id.* Upon completion of this survey, participants were given \$0.05 credit on their Amazon account.

¹⁰³ This number was determined by conducting a power analysis for a 2 x 2 x 2 between-subjects analysis of variance using G*Power. See generally Franz Faul, Edgar Erdfelder, Axel Buchner, & Albert-Georg Lang, *Statistical Power Analyses Using G*Power 3.1: Tests for Correlation and Regression Analyses*, 41 BEHAV. RES. METHODS 1149, 1150 (2009).

¹⁰⁴ IBM Corp. Released 2017. IBM SPSS Statistics for Macintosh, Version 25.0. Armonk, NY: IBM Corp.

¹⁰⁵ To ensure participants were attending to the details in the survey, they had to correctly answer four questions about the youth described in their vignette. The participants were asked to identify the youth's sex, race, age, and the crime the youth committed.

¹⁰⁶ 57.1% of the sample identified as female.

¹⁰⁷ The average age of participants was about thirty-four years ($M = 34.51$; $SD = 11.23$).

¹⁰⁸ Individuals were able to identify as more than once race. Most identified as White (76.1%), followed by Black (11.7%), Asian (8.8%), American Indian or Alaskan Native (3.4%), Native Hawaiian or Other Pacific Islander (0.5%), and Other (1.0%).

¹⁰⁹ 9.3% of the sample identified their ethnicity as Hispanic or Latino.

they had a college degree and some graduate school experience.¹¹⁰ Furthermore, 5.9% of participants reported working in the legal system,¹¹¹ and 29.8% reported having close friends or family members who worked in the legal system.¹¹² When asked whether they have ever committed a sex offense, 3.4% of participants indicated they had, and 2.9% of participants stated that they had to register as a sex offender. An additional 27.8% of participants reported that they knew someone who had been convicted of a sex offense, and 19.5% indicated that the individual was placed on the sex offender registry. Of those who responded to the questions about checking the sex offender registry, 53.2%¹¹³ stated they had checked the sex offender registry in their area and almost 10%¹¹⁴ indicated that, upon learning information from the registry, they changed their daily habits. These changes included altering their walking routes, building a privacy fence, establishing a self-imposed curfew, preventing their children from playing outside, and pointing out individuals in public who they knew were on the registry “so everyone knows” who they are.

B. Understanding the Results

In general, participants viewed youth who commit sex crimes negatively, indicating beliefs that people who commit sex offenses will likely recidivate¹¹⁵ and that the offending youth in the vignette they reviewed is not capable of rehabilitation.¹¹⁶ Although undecided on whether they feared the offending youth,¹¹⁷ on average, participants agreed with registering the youth

¹¹⁰ This sample was more educated than the national average with 45.4% completing graduate school and 20.5% completing some graduate school. See Camille L. Ryan and Kurt Bauman, *Educational Attainment in the United States: 2015*, U.S. CENSUS BUREAU 1, 1 (2016) (stating that the majority of adults in the U.S. have completed high school or some college).

¹¹¹ These participants' professions included a probation officer, police officer, paralegal, and attorney.

¹¹² Individuals reported that they had close friends or family members who worked as a police officer, forensic accountant, judge, attorney, corrections officer, court reporter, or social worker.

¹¹³ Out of the 205 participants, 109 individuals had checked the sex offender registry, 88 people had not checked it at all, 3 people preferred not to answer, and 5 people left this question blank.

¹¹⁴ 9.8% of the total sample changed their daily habits after checking the sex offender registry in their area.

¹¹⁵ Participants agreed with the statement that people who commit sex crimes are likely to commit another sex crime ($M = 4.04$; $SD = 0.791$).

¹¹⁶ Participants disagreed with the statement that with the right support and treatment, the offending youth can change his or her behavior ($M = 2.05$; $SD = 1.01$).

¹¹⁷ Participants were undecided on whether they feared the specific offending youth who was described in the vignette they were given ($M = 2.80$; $SD = 1.42$).

as a sex offender¹¹⁸ and requiring community notification.¹¹⁹ Participants somewhat believed that the offending youth should have residency restrictions,¹²⁰ and that registering the youth offender resulted in a safer community.¹²¹

To interpret the data and variables that went into participants' decision-making process, responses were totaled to create an overall score indicating how much the participant agreed with sex offender registration, notification, and restrictions procedures.¹²² The overall model examining the three-way interaction effect—if the sex of the offending youth, the race of the offending youth, and whether the crime was against a victim of the opposite sex or of the same sex explained individuals' attitudes regarding sex offender registration, notification, and restrictions procedures—was not significant.¹²³ However, the interaction effect between the sex of the offending youth and the sex of the victim on explaining individuals' attitudes regarding sex offender management procedures trended toward significance.¹²⁴ While not statistically significant, offenses committed against victims of the same sex were somewhat indicative of a participant's increased agreeableness to sex offender management procedures.¹²⁵ However, male youth offenders

¹¹⁸ Participants generally agreed that the offending youth described in the vignette should be registered as a sex offender ($M = 3.86$; $SD = 1.09$).

¹¹⁹ Participants agreed that the community as a whole should be notified of the offending youth's crime ($M = 3.81$; $SD = 1.17$).

¹²⁰ Participants somewhat agreed that the offending youth should not be able to live within 1,000 feet of a school or childcare center ($M = 3.48$; $SD = 1.27$).

¹²¹ Participants somewhat agreed that registering the offending youth helped to keep the community safer ($M = 3.32$; $SD = 1.15$).

¹²² This included answers to survey questions asking participants whether the youth should be required to register as a sex offender, whether the community should be notified of the crime committed, whether the youth should be prohibited from residing near a school, etc. The independent variables were sex of the offending youth (male or female), race of the offending youth (white or black), and whether the victim was the same sex or the opposite sex of the offender (same-sex crime or opposite-sex crime). This dependent variable met all necessary assumptions for running a $2 \times 2 \times 2$ between-subjects analysis of variance, including normality and homogeneity of variances.

¹²³ $F(1, 204) = 0.02$, $p = 0.883$, $\eta_p^2 \leq .001$.

¹²⁴ $F(1, 204) = 3.40$, $p = 0.067$, $\eta_p^2 = .017$. The remaining interactions were not significant. The interaction of the race of the offending youth and sex of the offending youth on participants' agreeableness with sex offender registration, notification, and restrictions policies was not significant, $F(1, 204) = 0.48$, $p = 0.489$, $\eta_p^2 = .002$. The interaction of whether the crime was committed against a victim of the same sex or the opposite sex of the perpetrator and the race of the offending youth on participants' agreeableness with sex offender registration, notification, and restrictions policies was also not significant, $F(1, 204) = 2.84$, $p = 0.094$, $\eta_p^2 = .014$.

¹²⁵ Agreeableness to sex offender registration, notification, and restrictions policies was measured out of a total of 30 points. Scores from 0 to 6 indicated "Strongly Disagree." Scores

committing a sex crime against a female victim resulted in the highest average participant agreeableness to sex offender management procedures.¹²⁶

C. What the Data Reveal About the Treatment of Same-Sex Offender-Victim Crimes

In addition to the disparate treatment of LGBTQ and minority youth in the justice system, as discussed in this article,¹²⁷ there is a societal stigma in the United States facing youth who commit sex offenses.¹²⁸ This research study was conducted to discover whether the public opinion of youth who commit sex offenses is affected by the race of the offending youth and whether the victim of the crime is the same sex or the opposite sex of the perpetrator. Although this data analysis did not find an interaction between the race of the offending youth, the sex of the offending youth, and whether the victim was the same sex as the offending youth or the opposite sex, interesting and important conclusions were still drawn from these results.

This study examined the public's opinion regarding nuanced beliefs about registration, notification, and restrictions for youth who commit sex offenses depending on variables surrounding the victim and the offender. The public generally agrees with SORNA practices, believing that youth who commit sex offenses should register as sex offenders and that the public should be notified of their crimes. It appears, however, that participants may have broader views regarding sex offender registration and notification requirements for youth who commit sex crimes. These opinions about sex offender management procedures for youth did not vary whether the youth is black, white, male, female, or whether the youth has committed a crime against a victim of the same sex or the opposite sex.

Contrary to the hypothesis for this research and the results of a previous research study,¹²⁹ this data analysis did not reveal an interaction between the sex of the offender and whether people believed same-sex

from 7 to 12 indicated "Disagree." Scores from 13 to 18 indicated "Undecided." Scores from 19 to 24 indicated "Agree." Scores from 25 to 30 indicated "Strongly Agree." Participants agreed with sex offender policies for female offenders who commit sex crimes against female victims ($M = 22.74$; $SD = 5.33$). Participants also agreed with sex offender policies for males who commit sex crimes against male victims ($M = 22.32$; $SD = 5.26$).

¹²⁶ Participants agreed the most with sex offender policies for male offenders who commit sex crimes against female victims ($M = 23.24$; $SD = 5.09$). Although slightly lower, participants also agreed with sex offender policies for females who commit sex crimes against male victims ($M = 20.75$; $SD = 6.19$).

¹²⁷ See *supra* Part III Section C.

¹²⁸ HUMAN RIGHTS WATCH, *supra* note 1, at 50.

¹²⁹ See generally Salerno et al., *supra* note 8.

offenders should be punished more harshly. Previous research querying participants about punishment, moral outrage, and explicit LGBTQ stereotypes found that during a consensual sexual encounter between two juveniles, participants were more likely to support sex offender registration for the LGBTQ youth than the heterosexual youth.¹³⁰ This was not translated to a same-sex encounter between two female youth.¹³¹ As the current study was interested in unconscious homophobic biases, there were no explicit references or language discussing homosexual relationships. Instead, the only information given regarding the possible sexual orientation of the offender was in the details of the vignette, stating the sex of the victim and the sex of the offender. This intentional nondisclosure of the offender's sexual orientation and absence of homosexual follow-up questions regarding same-sex encounters may have contributed to lack of an interaction in the same-sex offender-victim and opposite-sex offender-victim variable.

The findings from this research must be interpreted while also acknowledging its limitations. First, the vignette used in this study was based on a real-world case where a youth committed a contact sexual offense against a peer.¹³² The lack of variability in the participants' opinions regarding SORNA practices may show that the crime described was too severe, leaving no room for participants to consider leniency or gradation of punishment. Additionally, the attrition rate of this study, after the manipulation check, was nearly 80%. The participant sample that remained and completed the study was more educated than the national average. While it is not certain why that was, it may be due to the fact that sex crimes and punishment for those who commit sex offenses is an emotionally charged issue, and participants who attended to the details of the survey were somewhat invested or interested in the topic.

Furthermore, SORNA procedures and the various aspects of registration, notification, and restrictions (e.g., residency restrictions, school attendance) are complicated and vary by jurisdiction. Despite being given the paragraph of background information, it may be that participants completed the survey with varying degrees of knowledge regarding the topic. Due to the high number of participants who failed the manipulation check, there was a shortage of data on which to run the analysis. Considering two of the interactions were approaching significance, it may be the case that with a larger sample size and more statistical power, an interaction would be detected between the variables of interest and the public's agreement with

¹³⁰ *Id.* at 398.

¹³¹ *Id.*

¹³² *See In re T.H.*, 913 N.W.2d 578, 580 (2018).

registration, notification, and management procedures for youth who commit sex offenses.

V. CONCLUSION: A PROPOSED SOLUTION—EQUAL TREATMENT FOR ALL YOUTH WHO COMMIT SEX CRIMES

The lack of groundbreaking findings in this research inquiry does not mean disparate treatment of youth who commit sex crimes does not exist. In fact, the data suggests it is quite the opposite.¹³³ Regardless of the characteristics of the offender, the public is of the opinion that youth who commit sex offenses against a peer should be subject to, at the very least, sex offender registration and notification procedures.¹³⁴ This rings true for males, females, youth of color, and youth who may be members of the LGBTQ community.¹³⁵ Despite the overwhelming evidence that registration, notification, and monitoring procedures for youth who commit sex crimes do not keep communities safer¹³⁶ and have detrimental long-term consequences,¹³⁷ it appears that the general public has not been persuaded.

In March 2019, the National Council of Juvenile and Family Court Judges (NCJFCJ) released a resolution regarding sex offender registration requirements for youth offenders.¹³⁸ This document acknowledged the current state of the social science research and legal practice regarding youth who commit sex offenses and stated ten decrees on how juvenile and family court judges plan to apply the facts in practice.¹³⁹ Included in this resolution is the recognition that “placing youth on sex offender registries does not advance public safety and can actually make communities less safe” and that “reoffending rates for youth who offend sexually are extremely low.”¹⁴⁰ Additionally, it recognized that minority youth are disproportionately at risk of being placed on registries and that “the negative collateral consequences of placing youth on sex offender registries are well documented and include

¹³³ Salerno et al., *supra* note 8, at 398.

¹³⁴ See, e.g., Debra L. Cochrane & M. Alexis Kennedy, *Attitudes Towards Megan’s Law and Juvenile Sex Offenders*, 7 JUST. POL’Y.J. 1, 28 (2010) (discussing results of a study in which the “vast majority of participants agreed that juveniles should have to register [as sex offenders]”).

¹³⁵ See, e.g., Salerno et al., *supra* note 8, at 398 (describing disparities in survey respondents’ support for sex offender registration for gay versus heterosexual juvenile offenders); see also NCJFCJ RESOLUTION, *supra* note 21, at 1 (explaining that minority youth are disproportionately at risk of being placed on registries).

¹³⁶ See generally *supra* Part II Section B.

¹³⁷ See generally HUMAN RIGHTS WATCH, *supra* note 1.

¹³⁸ See NCJFCJ RESOLUTION, *supra* note 21.

¹³⁹ *Id.* at 1–2.

¹⁴⁰ *Id.* at 1.

suicide, homelessness, difficulty attending school, unemployment, and increased risk of being the victim of sexual abuse.”¹⁴¹ In an effort to right these injustices, the NCJFCJ agreed to support efforts to prevent youth from being placed on sex offender registries and promote evidence-based interventions and treatment programs for youth who commit sex crimes.¹⁴² Most importantly, this resolution urged Congress to restore judicial discretion for registration cases involving youth who commit sex offenses so that decisions can be made on a case-by-case basis and be guided by sexual offending risk assessments. The resolution also encouraged the government to drastically limit the number of youths considered for sex offender registration and allow individuals whose crimes were committed before the age of eighteen to petition to be removed from sex offender registries.¹⁴³

This resolution is a step in the right direction because it applies research to legal practice in an effort to restore the juvenile justice system to the purpose for which it was originally created: to help children in trouble.¹⁴⁴ Even though the judicial system is moving toward change, a dramatic shift in the societal dialogue around youth who commit sex offenses needs to occur to lessen the public outcry and public opinion that spurred the creation of these harsh laws in the first place.¹⁴⁵

Without public support, it is difficult, though not impossible, to create the legislative motivation to amend or repeal SORNA laws. Despite efforts by advocates, the stigma and stereotypes around sexually offending youth still remain strong in the public sphere. To continue to dispel myths surrounding youth who commit sex crimes and create public support for rehabilitative practices, the public must be educated about this issue and the collateral consequences of justice involvement for these youths. As less culpable individuals, *all* youth need to be treated as what they are: children. As youth who commit sex crimes are often victims themselves,¹⁴⁶ a focus on preventative care, evidence-based treatment programs, and rehabilitative practices will lead to fewer overall victims of the criminal justice system.

¹⁴¹ *Id.*

¹⁴² *Id.* at 2.

¹⁴³ *Id.*

¹⁴⁴ SNYDER & SICKMUND, *supra* note 22, at 94.

¹⁴⁵ See Daniel M. Filler, *Making the Case for Megan's Law: Study in Legislative Rhetoric*, 76 INDIANA L.J. 315, 318 (2001) (discussing how the “rhetoric of law” was demonstrated in the Megan’s Law legislative debates to reveal how public opinions about a social issue can result in legal change).

¹⁴⁶ See generally HUNTER, *supra* note 74; see also LONGO & PRESCOTT, *supra* note 74.

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